Supreme Court, U.S.
FILED
AUG 29 2003
OFFICE OF THE CLERK

No. 02-1774

In the

Supreme Court of the United States

IN RE: FRED RIGGS, DONNA SINGER and AL DICKSON

ON PETITION FOR WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY TO RESPONDENTS OF SAN JUAN COUNTY'S BRIEF IN OPPOSITION

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NOW COMES THE PETITIONERS in reply to the San Juan Health Service District's respondents group brief in opposition to the Petitioners' Supreme Court rule 20 and 28 U.S.C. 1651(a) and 28 U.S.C. sec. 1738 extraordinary writ of mandamus and writ of petition to enforce four Navajo Court orders under 28 U.S.C. sec. 1738's full faith and credit in this Court as follows:

Statement

Respondents do not dispute;

(1) the *land where the acts initially occurred* were initially on Utah Navajo trust land within the Aneth extension surrounded by Navajo communities, controlled by Utah under Congressional mandate in a private purpose trust *paid for with Navajo royalties from Navajo non-renewable resources as defined by Congress* in 18 U.S.C. 1151, Utah Code 63-88-102 et seq. and Act of June 14, 1934, ch. 521, 48 Stat. 960-962 [bad faith litigation and patient billing was on Navajo reservation trust land];

(2) Navajo Court counter-claiming respondents *actively sought* Navajo court relief for false non-compulsory counterclaims of fraud, theft, etc. against Petitioner Singer waiving any immunity by presenting live witnesses and evidence and participating in the litigation fully (*Sutton v. Utah School of the Deaf and Blind* 1999 U.S. App. LEXIS 3159,*19- 20 ;173 F.3d 1226 (1999));

(3) the Navajo Court counter-claiming repondents, and Truck and Attorney Ickes, *failed to exhaust their required Navajo remedies* or do a *National Farmer Union Ins. Co. v. Crow*, 1985 LEXIS 27, 471 U.S. 845, 855-856 (1985) analysis, in Navajo Court, prior federal court relief;

(4) and the Navajo Court counter-claiming respondents never *affirmatively* sought relief by motion or cross-

petition in the federal courts below. [1]
Respondents here raise no claims of lack of due process, bad faith or harassment claims that warrants giving them any equitable relief from the Navajo Court orders. The Respondents (including Truck and Attorney Ickes) failed to file a cross-petition for relief from these orders and this petition. With no cross-petition, this Court has said it will not deny relief to the Navajo Court Petitioners. [2] Respondents cite no law repealing 1738's coverage from this Court or *why* it is inappropriate for this Court to issue the Writ when the lower Courts are ignoring or denying it. Extra. Writ. 119a.

3 years of delay and appeal are a denial of due process

Justice delayed is justice denied. *Arnett v. Kennedy*, 416 U.S. 134 (1974); 1974 U.S. LEXIS 125 *140. If this petition is not granted, it is because Petitioners Riggs, Dickson are Indian, (Singer is wife and mother of Indians), their laws are Indian, and their U.S. Navajo

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[1] (See, *Coleman v. Thompson*, 501 U.S. 722, 735 n. 1, 111 S.Ct. 2546, 2557 n. 1, (1991)(the clear expression rule "does not apply if the petitioner failed to exhaust state [here Navajo and Federal] remedies and the court to which the petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred.")

[2] "Absent a cross-appeal, an appellee may "urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court," but **may not** "alter the decree with a view either to enlarging his own rights thereunder or of **lessening the rights of his adversary**." [citations ommitted] and more than 60 years ago we spoke of it as **"inveterate and certain,"** Morley Constr. Co. v. Maryland Casualty Co., 300 U.S. 185, 191, 81 L. Ed. 593, 57 S. Ct. 325 (1937)."
El Paso Natural Gas v. Neztsosie, 1999 U.S. LEXIS 3004,*11-12; 526 U.S. 473 Emphasis added.
As such, full faith and credit enforcement of the orders under sec. 1738 is entirely appropriate specifically for Navajo law and Indian Civil Rights Act relief from Courts with exclusive jurisdiction. 25 U.S.C. 1303.

Nation judge, presumed by this court to be unable to distribute justice fairly to non-Indians, is Indian. [3]

RESPONDENTS' BRIEF IS FLAWED PROCEDURALLY AND READS LIKE A CROSS-PETITION SEEKING RELIEF FROM NAVAJO ORDERS RATHER THAN A BRIEF IN OPPOSITION

Petitioners are denied due process by having to respond to a brief in opposition that reads like a cross-petition with (1) lack of specific argumentation (unlike the Petitioners' brief); (2) broad inaccurate generalizations; (3) new issues; (4) off point case law; and (5) ignoring Petitioners' arguments and case law (6) all designed to in some way subvert Congressional mandates on this Court. Such argumentation places this Court in the position of being the Respondents' advocate by presuming their arguments based upon their ambiguities.

No less than 7 frivolous arguments have been raised by the Respondents and are charted in APPENDIX A. [4] *Wilson v. Marchington*, 127 F.3d 805 (9th cir. 1997) *cert denied* April 28, 1999, a key case for the respondents, involving a traffic accident, is *but one example* of inapplicability here. [5] Respondents wholely

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[3] Significantly, here, the Petitioners had to overcome the Navajo Judge's presumptions in favor of the municipal-type organizations and officials that the Navajo Judge relied upon to lift the May 14, 1999 TRO before issuing orders after over 9 months of litigation.

[4] Petitioners attempted to list and address these new arguments within the 10 page limits, but they were so numerous, and because they were not in a cross-petition, to respond anyother way than charting the arguments/responses, was entirely impossible.

[5] *Marchington* did not involve 1) the three branch representative government of the Navajo Nation; 2) a municipality-type organization violating the Indian Civil Rights Act 25 U.S.C. 1301 et seq. that is under the exclusive jurisdiction of Indian Courts (*Santa Clara*, supra), (3) violating other Navajo legislation that is sheltered by Congressional enactments (Pet. brief 14-15); (4) bad faith litigation that further harmed Navajo Nation Bill of Rights

ignore *Halwood v. Cowboy Auto Sales*, 946 P.2d 1088(1997) *cert denied* Feb. 22, 1999 docket no. 98-858, *U.S. ex rel Mackey v. Coxe*, 59 U.S.S 100 (1856), *Standley v. Roberts*, 59 F. 836, 845 (CA 1894), and *S.R.I. v. Pollaca*, SC-CVV-86-96 (Navajo Nation 2000) and others in Petitioners brief fn.45 showing 1738's application here. Respondents had a duty to inform this Court of cases opposite *Marchington* and did not.

SUBJECT MATTER JURISDICTION IS RAISED BY BOTH PARTIES

Both Petitioners and the respondents, in opposition, are raising this Court's subject matter jurisdiction under 28 U.S.C. sec. 1738 in relation to Indian territories, and as such, even for the first time on appeal, this Court even *sua sponte* must address the question (See , *Freytag v. Commissioner*, 501 U.S. 868, 894-895 (1991)(J. Scalia concurrence). Neither do respondents state how seeking a writ of mandamus to carry out a statute's demand on the courts is an abuse of the writ or outside its jurisdiction. See, *McClesky v. Zant*, 1991 U.S. LEXIS 2218, 48 ;499 U.S. 467.[6] Respondents don't dispute judicial economy is

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protections, again within the exclusive jurisdiction of the Navajo Court; (5) non-Indian (except three) respondents who all, without exception, consenually sought the Navajo Court jurisdiction for non compulsory Navajo common law claims against Petitioner Singer; (6) respondents who never affirmatively sought and exhausted relief in Navajo and Federal courts below as counterclaimants [waiving subject matter and personal jurisdiction and immunity]; (7) Navajo orders duly issued by a Navajo Court carrying out a BIA-Navajo judicial program contract in a uniform and fair manner while exercising Navajo inherent soveriegnty. All these factors make *Marchington* inapplicable here.

[6] Especially, here, where Respondents do not dispute that Congress has exercised its Article I and Article IV plenary or absolute authority to make needful laws for U.S. territories and possessions, and has chosen to legislate to protect Indian Nation sovereignty in accord with Treaties by way of several statutes, Pet. Brief fn. 23,

fostered by taking the case now. [7] See, *Lambrix v. Singletary*, 1997 U.S. LEXIS 2802,*13;520 U.S. 518 (the "inquiry requires a detailed analysis of federal constitutional law" and "rather than prolong this litigation by a remand" the Supreme Court is justified take the petition).

Successive Petitions are appropriate here.

This petition and their response call into question this Court's subject matter jurisdiction, the scope of its abilities, serious civil and human rights and liberty interests under 28 U.S.C. sec. 1738, separate from the petition for certiorari 02-1253. All are appropriate grounds to allow successive petitions. See, generally, *Felker v. Turpin*, 1996 U.S. LEXIS 4264,*20-22;518 U.S. 651 (this Court's ability to review successive petitions must be repealed by Congress, repeals by implication are disfavored). No statute prevents this Court from carrying out sec. 1738, particularly here, since the 10th cir. rejected the petitioners' petition for sec. 1738 relief. Pet. brief 119a.

Undisputedly, Federal Courts Below Acted Outside their Jurisdiction

Respondents don't deny the Federal Courts below illegally became new fact finders in dismissing

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26, 27, 28, 29, and ratify International law binding upon U.S. Indian Nations. Pet. Brief 25. Indian Nation law is not subordinate to states and certainly not counties, *MacArthur et al v. San Juan County et al*, 2002 U.S. App. LEXIS 20987, 309 F.3d 1216 (10th cir. 2002).

[7] For splits in the circuits as to the origin of Indian Nation Court authority, and federal court subject matter jurisdiction in Indian cases, *See, U. S. v. Enas*, 9th Cir. 2001 U.S. App. LEXIS 14397, *46 ; *U.S. v. Billie Joe Lara*, 8th Cir. 2003 U.S. App. LEXIS 5685,*11-12;324 F.3d 635; and *U. S. v. Frank Long*, 2003 U.S. App. LEXIS 5492,*23;324 F.3d 475. The very reason this Court should take this petition.

Truck and Attorney Ickes for *Navajo* claims and Indian Civil Rights Claims outside federal court authority over *Navajo* law. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 51 fn. 19-21 (1978) and 25 U.S.C. 1303. Enforcing the orders will undo this harm. *Santa Clara Pueblo, supra*, and 25 U.S.C. sec. 1303. ALLEGED 'exhaustion' occurred when *respondents* failed to seek further Navajo Court relief in Navajo Courts. Pet. brief fn. 53.

Respondents' cases for denying mandamus do not apply to the doctrines of finality fostered under 28 U.S.C. sec. 1738 enforcement.[8] *See, Camiolo et al v. State Farm Fire and Cas., Co. et al*, 2003 U.S. App. LEXIS 13258 *23 (3rd Cir. Court)(Courts are obliged to uphold legislation not in conflict with the Constitition). Here respondents never argue the Navajo law they broke is legislation that conflicts with the U.S Constitution.

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[8] See, *Will v. U. S.* 389 U.S. 90 (1967) (criminal case with no sec. 1738 involvement involves Court's discretion, not statute demand as with sec. 1738); *Allied Chemical Corp v. Daiflon, Inc*, 449 U.S. 33 (1980) fn. 3 (cuts *for the Petitioners* in that neither the Appellate Court nor Federal Court had any authority or discretion to dismiss Truck and Ickes or parties *particularly without looking at the trial record*,); *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997), *cer denied*, 523 U.S. 1074 (1998) (respondents fail to *discuss Marchington*'s assessment of Indian Nations or identify what reasoning and points of law apply nor why *Marchington* should apply to *Navajo* rulings when it dealt with another Indian Nation); *State ex rel Lambert v. King*, 538 S.E. 385, 388 (W.V. Ct. App. 2000) (respondents seek to use West Virginia case and statutory law, here, for Indian law and federal statutory mandates upon the Court. However, even under *King*, if a Court is materially in error in law (such as the federal courts below) or sub ject matter jurisdiction, *King* supports the writ and petitioners view).

PETITIONERS' NAVAJO LAW CLAIMS ARE EXHAUSTED

28 U.S.C. sec. 1738 full faith and credit enforcement is all that remains within the subject matter jurisdiction of the Federal Courts over Indian law claims and relief. Federal Court can only give habeus corpus relief under 28 U.S.C. 1303 for Indian Civil Rights Act violations, and are not designated by Congress as an appeal Court for Navajo claims. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 51 fn. 19-21 (1978). *Camiolo, supra. Never disputed by any respondents.*

CONCLUSION

Equality before the law, Congress' and Navajo law, dictates that a Writ of Mandamus enforcing the Navajo orders against the Respondents under 28 U.S.C. 1738 should issue without further delay.

A WRIT OF PROHIBITION IS APPROPIATE TO STOP ONGOING HARMS

A 'unified defense gags the organizations' voice before the court without troubling the Court for a gag or protective order for the entity that can investigate/prosecute wrongdoers, control settlements, effectuate discovery, and so forth. Petitioners seek to prohibit the use of a 'unified defense', wherein the organization and other newly elected officials, having by LAW, claims against the wrongdoer officials, all have the same attorney or law firm.

The 'unified defense's, ongoing harm, is *against* Utah and United States public policy, and Petitioners welfare , as follows: (1) the *Utah and Federal Constitutions that guarantee petitioners' access to and communication with the entities* and the officials[9] for

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[9] "Congress shall make no law respecting . . . the right of the people peaceably to assemble, and to petition the Government for a

the purpose of redress of wrongs and to foster sound public policy, albeit in a Court of law. See Utah Bar Ethics Opinions 115 and 115r for a discussion of these RIGHTS of the petitioners in Utah[10] ; (2) the Utah Supreme Court decision in *Salt Lake County v. Short*, 1999 UT 73, par. 33-35, [pet. brief page 27], *mandates separate representation of Counties separate from the wrongdoers* (a decision wholly ignored and conceded by the respondents); (3) Utah Bar Ethics opinion 98-06 [11] that applies to all attorneys representing such government organizations, commissions of officials, and the wrongdoers [pet. brief 29] (an ethics opinion ignored by the respondents *requiring the entity have separte counsel when the County Attorney or wrongdoing officials are parties* the County organization may investigate and prosecute) and (4) FRCP rule 11[12] and Rules of Professional Conduct 3.3 and 3.4 candor to the tribunal and parties. *Violations of Public Policy also presume to injure the Court, the petitioners, and respondent newly elected officials* who gave no prior approval for their representation, who are charged with a fine for not carrying out the Navajo orders due to the wrongdoers' acts. RESPONDENTS DON'T DENY THEY NEVER OBTAINED THE NEWLY ELECTED COUNTY OFFICIALS' APPROVAL PRIOR TO SIGNING THE DOCUMENTS IN THIS COURT, AND

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redress of grievances." U. S. Const. amend. I. "All men have the inherent and inalienable right . . . to assemble peaceably, protest against wrongs, and petition for redress of grievances." Utah Const. art. I, § 1.

Utah Ethics Opinion 115 fn. 1.

[10] htttp://www.utahbar.org/opinions/html/115.html

htttp://www.utahbar.org/opinions/html/115r.html

[11] http://www.utahbar.org/opinions/html/98-6.html

[12] See *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 1991 U.S. LEXIS 1297,*13-14;498 U.S. 533 ("Rule 11 is "aimed at curbing abuses of the judicial system.").

THE PUBLIC RECORDS SHOWS THEY DID NOT. Two-thirds of the public in San Juan County are disenfranchised in this litigation when 2 newly elected officials are not consulted prior to filings.

Appeals are no Substitute for Meaningful Hearing

An Appeal of an erroneous decision that can be avoided by candor to the tribunal now is a waste of judicial and parties' resources.... not a problem for Insurance funded and controlled litigation. To force petitioners because they are Indians to go through more expensive appeals in the face of bad faith litigation in the federal courts AND IN THIS COURT violates due process and equal protection rights that are entitlements of the Petitioners. Utah ethics opinions 115 and 115r fn. 10 *infra.*

Petitioners' Rights to Seek Redress Have Been Annhialated and They Have Standing

Petitioners' petition for certiorari was denied due to this Court's reliance on the erroneous belief that the documents before it were approved and based upon minimal research by the organizations prior to signing. Petitioners and THIS COURT have a right to know the true current litigation position of the Utah County and District *organizations, separate from the wrongdoers holding the organization's litigation hostage.* The organizations are charged with and exist for the purpose of 'achieving the ends of justice" *Frey v. Dept. of Health & Human Services*, 106 F.R.D. 32,37 (EDNY 1985). fn.11, *supra.* [13] Such minimal research PRIOR to signing a document requires minimal contact and discussion of the case with clients the attorney alleges to represent. *Business Guides, LEXIS *26, 43 supra.* Respondents ignore these legal sources, thus conceding

[13] *Arnett v. Kennedy*, 416 U.S. 134 (1974); 1974 U.S. LEXIS 125 *140.

them.

Respondents show Commissioner Maryboy, a Navajo member, was entitled to have separate representation of his choice. Resp. brief pg. 11a. What respondents fail to state is that Mr. Maryboy's, 'alleged' attorney from Suitter & Axeland sought a gag order on their 'own' client in the wrongdoers' behalf, prior to resigning from representing Mr. Maryboy. Mr. Maryboy wished to speak to the Court about the harms to the Navajo people in San Juan County and patterns of practice by the wrongdoers. APPENDIX B[14] Pet. brief 158a. Navajo Court has not dismissed Mr. Maryboy since leaving office, presumably due to a stay of proceedings in Navajo Court while this Court reviews these issues.

CONCLUSION

Based upon the foregoing, the petition for a writ of prohibition should be granted.

Respectfully submitted,

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[14] Mr. Maryboy could not afford or obtain counsel for 4 months during which the Federal Court was denied his salient contribution as to how San Juan County Navajo court wrongdoers had a systematic way of dealing with those persons challenging them by ruining their reputations, seeking to destroy them professionally, economically and socially, had a pattern of discriminating against Commissioner Maryboy and other Indian citizens, and was harming the Navajo people by privately billing them for publicly insured health services. See APPENDIX B pgs. 17a-18a, 24a-26a attached. Important information to which the Court and Petitioners were entitled.

APPENDIX CHART A
TABLE OF AUTHORITIES

CASES

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Kiowa Indian Tribe of Oklahoma v. Hoover, 1998 U.S. App. LEXIS 15769,*17;150 F.3d 1163 (1st Cir. 1998) 11a

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(Any footnotes trail the end of each document)

APPENDIX CHART A

SEVEN RESPONDENTS' ARGUMENTS THAT ARE FRIVOLOUS AND WHOLLY WITHOUT MERIT

Inacccurate Argument (1): Not Mandatory on Federal Courts

The statute 28 U.S.C. § 1738 is not mandatory and states Congress can choose to extend full faith and credit to Indian Nation judgments. (Resp. brief page 15 and referencing a discretionary writ on pg. 10).

Accurate Response (1): Is Mandatory on Federal Courts

The word 'shall' for 'every' court (Resp. brief page 15) is obligatory. *Mallard v. United States District Court*, 490 U.S. 296, (1989);1989 U.S. LEXIS 2232 *12-14. Respondents say nothing and concede Petitioners cite to the Utah Enabling Act that states Utah 'forever disclaims all right and title... to all lands lying within said limits owned or held by any Inian or Indian tribes"... and Utah code 9-9-208, 209 giving full effect to Indian law not in violation of Utah law. (Pet. Brief page 17,20). Respondents cite to no case law showing how 'shall' is not an obligatory term.

Inaccurate Argument (2):

§ 1738 outside the federal judiciary's subject matter jurisdiction

28 U.S.C. 1738 full faith and credit extension to Navajo orders is "not within the power of the federal judiciary". (Resp. Brief 15 par.2).

Accurate Response (2):

Congress Mandates Federal Courts Apply Full Faith and Credit

"Absent a partial repeal of the Full Faith and Credit Act, 28 U.S.C. § 1738, by another federal statute, a federal court must give the judgment the same effect that it would have in the courts of the State in which it was rendered." *Matsushita Electric Industrial Co, Ltd., et al v. Epstein, et al*, 1996 U.S. LEXIS 1550,*6-7; 516 U.S. 367. Emphasis added. Respondents cite no case law in support of the federal judiciary being forbidden enforcement authority under § 1738.

Inaccurate Argument (3):

§ 1738 applies "only to states" (Resp. brief pg. 13).

Accurate Response (3) : § 1738 applies to 'Every Court'

Respondents entirely ignore, and thus concede, Petitioners' fn. 45 and *stare decisis*, *Atchison, T. & S.F. ry. v. Sowers*, 213 U. S. 55, 65 (1909)("The provision in the Constitution making it the duty of courts in one State to give full faith and credit to the decrees and legislative acts of other States is mandatory..... The Territories are included in this constitutional provision.

Mockey v. Coxe,18 How. 100 [Cherokee]; Mehlin v. Ice, 56 Fed. Rep. 12 [Cherokee]; Quesenbach v. Wagner, 41 Minnesota, 108." emphasis added.) . Resp. brief pg. 13. and *United States ex rel. Mackey v. Coxe*, 18 How. 100 (1856) among others referencing United States Indian territory within § 1738's "territory" definition as raised by Petitioners are ignored. Pet. brief fn. 45.

Indian Nations for legislative purposes were defined as 'states'.

"INDIAN TRIBE. A separate and distinct community or body of the aboriginal Indian race of men found in the United States.

2. Such a tribe, situated within the boundaries of a state, and exercising the powers of government and, sovereignty, under the national government, is deemed politically a state; that is, a distinct political society, capable of self-government; but it is not deemed a foreign state, in the sense of the constitution. It is rather a domestic dependent nation. Such a tribe may properly be deemed in a state of pupilage and its relation to the United States resembles that of a ward to a guardian. 5 Pet. R. 1, 16, 17; 20 John. R. 193; 3 Kent, Com. 308 to 318; Story on Const. 1096; 4 How. U. S. 567; 1 McLean, 254; 6 Hill, 546; 8 Ala. R. 48."

A LAW DICTIONARY, ADAPTED TO THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA AND OF THE SEVERAL STATES OF THE AMERICAN UNION by John Bouvier Revised Sixth Edition, 1856.

Respondents cite no case law stating §1738 applies only to states.

Inaccurate Argument (4):

Full Faith and Credit enforcement is premature

Respondents assert Full Faith and Credit enforcement is premature since Respondents Immunity is still to be decided below after three years of appeals and delays and 1738 was not originally raised in District Court. (Resp. page 11).

Accurate Response (4): Immunity issue is moot and 10th cir. rejected 1738 motion.

All the respondents totally ignored, thus conceding, that municipal-type respondents lack any state immunity, as held in *Cook County v. U.S. ex rel Chandler*, 2003 U.S. LEXIS 1957,*12-14;123 S. Ct. 1239 (as far back as Coke in England, municipal corporations were like any other 'natural' person not entitled to 'state' immunity where they can sue and be sued, as here) and *Jinks v. Richland County, South Carolina*, 2003 U.S. LEXIS 3241,*16-18;123 S. Ct. 1667; 538 U.S. (slip opinion April 22, 2003)(State political subdivisions are not the 'state' for statutory and Constitutional immunity purposes). Indeed, this Court has noted that States have no authority to authorize officials to violate the law and the official is personally responsible for wrongdoing in injunctive or mandamus situations. *See, Ex Parte Young*, 1908 U.S. LEXIS 1726, *66-67; 209 U.S. 123. Immunity for counter-claiming Navajo respondents is moot and futile below.

Respondents cite no authority giving state immunity to municipal-type organizations that can sue and be sued or to officials from Indian Nation Courts for Indian law and Indian Civil Rights Act violations occurring within Indian Nation borders, where they countersue, as here.

The 10th Cir. denied petitioners' petition for full faith and credit enforcement. Extra. Writ. App. 119a. Respondents fail to respond to Petitioners argument that this court is part of 'every court' within the plain language of 1738 and don't deny that the Federal district court has refused to date to follow the 10th cir. order for a *National Farmer Union Ins. Co. et al v. Crow et al*, 1985 U.S. LEXIS 27, 471 U.S. 845, 855-856 (1985) analysis since such an analysis of treaties, statutes, executive orders cuts directly against any Montana analysis, an indication of a lack of objectivity of the Federal Court below. A *Nat'l Farmer's* analysis for respondents is required first in *Indian Nation Courts* (id) and respondents refused to do such an analysis or exhaust their Navajo Nation Court remedies and now at this late date, seek relief that is procedurally barred. Petitioners have sought enforcement in federal courts for three years at all levels to no avail. The split between what is Indian Court jurisdiction between this Court and Congress and the Executive is too great to know how to rule. This petition for a writ is justified for this Court to answer.

Inaccurate Argument (5):

Respondents claim "there are still options available in the Lower Courts" (Resp. brief 12).

Accurate Response (5):

Federal Courts have no jurisdiction over Indian law and Indian Civil Rights violations within the *Exclusive Jurisdiction* of Indian Courts.

Enforcement below has been denied. Alleged federal court exhaustion defeats §1738's purpose

Respondents don't dispute the federal district court has denied § 1738 full faith and credit enforcement (Extra. Writ App. 203a-205a) for Truck and Attorney Ickes, ignored the Petitioners' motion for months while seeking to review new evidence, and the 10th circuit refused a petition for enforcement (Extra. Writ App. 119a). Respondents don't dispute that prior to even seriously studying the Navajo orders and judgment, the federal district judge pronounced they may be appealed and his decision wouldn't take long.... a statement at least appearing less than impartial (Pet. brief pg. 25). Further, Respondents do not debate that Federal Courts have no authority over Navajo Relief for Navajo violations and injuries, particularly since they countedsued and volunteered to be a party, and the delay has been a complete denial of due process for the Navajo Court petitioners. Futility is a reason for not requiring exhaustion. Justice delayed is justice denied. *Arnett v. Kennedy*, 416 U.S. 134 (1974); 1974 U.S. LEXIS 125 *140. Due Process is non existant for Indians, with Indian claims, and Indian orders in a non-Indian federal court.

'Exhaustion' defeats the purpose of §1738. If Congress wished Indian Nation territorial law proceedings to be subjected to Federal judiciary alleged 'exhaustion', appeals, oversight and control, it could and would have so said in § 1738, or this Court could have so said and did not in *Coxe, Atchinson, Embry v. Palmer*, 107 U.S. 3, 9(1883). Pet. Brief fn. 45. *See, Weinberger v.Salfi*, 422 U.S. 749, 766-767 (1975). Alleged 'exhaustion' in hostile federal courts completely defeats the primary preclusionary function of 28 USC § 1738 that is designed to preserve the independence of territories and possessions from Federal judiciary interference, promote finality of litigation, that Congress controls

with plenary, or absolute, authority.[1] Respondents cite no law wherein this Court is exempt from §1738's scope and intent.

Inaccurate Argument (6):

Full Faith and Credit does not Apply to Indian Nations' proceedings (Resp. brief pg.14)

"....[O]utside .... ICWA, and other limited areas with statutory authorization ,courts will not recognize tribal court judgments as being entitled to full faith and credit." (Resp. brief pg. 14). Because Congress Did not So State

Respondents cite to *Wilson v. Marchington*, 127 F.3d 805 (9th cir. 1997) cert denied April 28, 1999, by claiming that if Congress wished § 1738 to apply to Indian Nations it would have so said.

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[1] Most recently in *Camiolo et al v. State Farm Fire and Casualty, Co. et al*, 2003 U.S. App. LEXIS 13258,* the Third Circuit Court discussed Congressional intent to give full force to State laws by precluding Federal litigation of State proceedings so long as the State law does not run afoul of the Supremacy Clause. Here, we have independent (1) Navajo Nation Treaty law, (2) Congressional enactments supporting Indian Nation inherent sovereignty, (3) the exercise of the Navajo Nation authority in legislation the Respondents violated, and (4) the BIA-judicial program Executive interpretation of treaty powers, are all embodied in the Article VI Supremacy Clause, and is superior to State law for authority that does not derive from Congress or the Constitution. See, *NLRB v. Pueblo of San Juan*, 276 F.3d 1186, 1192 (10th Cir. 2002) en banc) (footnote omitted); *Forty-Three Gallons of Whiskey, supra.* (Pet. Brief 2-4 listing all the Navajo law respondents undisputedly violated as found in the Navajo orders).

Accurate Response (6):

When a statute antedates the entity, one can not presume it does not apply.

This Court on More than One Occasion has Identified United States Indian Nations as being Indian Nation Territories and Respondents Should have so Informed this Court.

§ 1738 antedates the formal Indian Nation Court systems of today just as it does state administrative agencies. When the statute antedates the entities, one can not presume § 1738 does not apply, and repeals by implication are disfavored particularly of Treaty powers superior to state law. See, *U.S. v. Forty-Three Gallons of Whiskey*, 1876 U.S. LEXIS 1368,*8-9;93 U.S. 188; the 10th cir. ruling below, *MacArthur et al v. San Juan County et al*, 2002 U.S. App. LEXIS 20987, *14-15; 309 F.3D 1216 (10th Cir. 2002). *See, University of Tennesee, et al v. Elliot,* 1986 U.S. LEXIS 142,*13;478 U.S. 788 (§ 1738 "clearly does not represent a congressional determination that the decisions of state administrative agencies should not be given preclusive effect. " since § 1738 antedates state administrative agencies covered by § 1738). This Court found that § 1738 is statute that supports finality, and has a preclusive effect on retrying proceedings. Id. Respondents are seeking second and third bites at an apple, in federal courts that have no jurisdiction other than enforcement, and habeaus corpus, for Navajo relief. They should have bitten upon in Navajo Court with the *exclusive* jurisdiction over Navajo law violations and Indian civil rights violations, and have foreclosed that possibility. *Santa Clara Pueblo v. Martinez*, 436 U. S. 49, 51 Fn. 19-21. 25 U.S.C. §1303.

Respondents never affirmatively sought relief by cross-petitions or affirmative motions in Federal Court.

Halwood v. Cowboy Auto Sales, N. M. Supreme Court, 946 P.2d 1088 (1977) *cert denied*, Docket no. 98-858 (Feb. 22, 1999), applies full faith and credit to Navajo proceedings, opposite *Marchington*, and was completely ignored, and thus, conceded to by the respondents. Respondents had a duty to inform the Court of other cases that are in opposite to *Wilson v. Marchington*, and did not and did not dispute, ignored, and thus, conceded the reasoning and facts of petitioners. Pet. Brief. fn.23-25.

Inaccurate Argument (7):

28 U.S.C. §1261 controls and limits 28 U.S.C. § 1738. (Resp. brief 12-13).

Accurate Response(7) : Both Acts work together.

The clear wording of the all writs act § 1261 *supports* § 1738. Time tested Rules of Statutory Construction control this issue.

> "The Supreme Court and all Courts established by an act of congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

28 U.S.C. 1261

> "The records and judicial proceedings of *any* court of *any* such State, Territory or Possession, or copies thereof.... shall have the same full faith and credit in *every*

> court within the United States and its Territories and Possessions as they have by law or usage in courts of such State, Territory or Possession from which they are taken."

28 U.S.C. § 1738 Emphasis added.

Under cardinal rules of statutory construction,

> "We have repeatedly stated, however, that absent "a clearly expressed congressional intention," Morton v. Mancari, 417 U.S. 535, 551, 41 L. Ed. 2d 290, 94 S. Ct. 2474 (1974), [*37] "repeals by implication are not favored," Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Comm'n, 393 U.S. 186, 193, 21 L. Ed. 2d 334, 89 S. Ct. 354 (1968). An implied repeal will only be found where provisions in two statutes are in "irreconcilable conflict," or where the latter act covers the whole subject of the earlier one and "is clearly intended as a substitute." Posadas v. National City Bank, 296 U.S. 497, 503, 80 L. Ed. 351, 56 S. Ct. 349 (1936)."

Branch v. Smith, 2003 U.S. LEXIS 2709,*36-37;123 S. Ct. 1429. Emphasis Added.

"Where there are two acts upon the same subject, the rule is to give effect to both if possible.. The intention of the legislature to repeal 'must be clear and manifest." *United States v Borden Co.*, 308 U.S.S 188, 198 (1939). "In light of the factors indicating no repeal, we simply cannot conclude that Congress consciously abandoned its policy of furthering Indian self-government...."

Morton v. Mancari, 417 U.S. 535, 551 (1974). See, *Healy v. Ratta*, 292 U.S. 263, 270, 78 L. Ed. 1248, 54 S. Ct. 700 (1934) ("Due regard for the rightful independence of [Indian Nation Treaty and self-determination] governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which the statute has defined"). Id. *10 . See also, Pet. Brief fn. 42-44. Respondents ignore, and thus concede, that statutes are to be construed favorably in favor of Indians. *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985). (Pet. brief 21).

There is nothing in the clear wording of § 1261 that repeals the broad mandates upon 'every' federal court, including this Court, in § 1738, and Petitioners cite no authority for this Court to deny this Court is part of 'every' court within the scope of § 1738's mandatory requirements. 28 n. 1(1st Cir. 1998). Nor do respondents deny that Indian lands are possessions within the meaning of the statute. (Pet. brief fn. 40) *United States v. Alford*, 1927 U.S. LEXIS 26, *4-6; 274 U.S. 264. Undisputedly, Congress EXPRESSLY intended that Federal Courts should not be second guessing Indian Courts for Indian law and Indian Civil Rights Act violations by retrying the cases or applying federal law for Indian law violations, or by demanding some form of 'federal' court alleged exhaustion. 25 U.S.C. 1303. *Santa Clara* at 51 fn. 19-21. See, *Kiowa Indian Tribe of Oklahoma v. Hoover*, 1998 U.S. App. LEXIS 15769,*;150 F.3d 1163;

> "The Rooker-Feldman doctrine bars "a party losing in state court ... from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself

> violates the loser's federal rights." citations omitted."

Id. at *17.

For all the same prudential reasons federal district courts are not appellate courts for losing parties in state court, district courts even more so are not appellate courts for losing parties under Indian law and Indian civil rights violations judgments, particularly when they are counterclaiming parties.

Even more than states, § 1738, Treaties, Article VI supremacy clause, Article I and Article IV Congressional 'plenary' powers over territories and possessions and the Indian commerce clause, prevents district courts from being appellate courts for Indian Nation law as occurred here. Under the Rooker-Feldman doctrine, Indian Nations' territorial proceedings orders and judgments, should go directly to this Supreme Court. 'Exhaustion' annhilates Congress' §1738 intent.

Respondents fail to show how any other statute or Constitutional article can preclude the clear meaning of §1738 of 'every court' applying to this Court, in light of foregoing authorities.

APPENDIX B

Case No. 2-00CV-0584K

IN THE UNITED STATES DISTRICT COURT OF
THE STATE OF UTAH
CENTRAL DIVISION

DR. STEVEN MACARTHUR, DR. NATHANIEL PENN, MICHELE LYMAN, HELEN VALDEZ CANDACE LAWS, PAUL KEITH, DOROTHY KEITH, LINDA CACAPARDO, SUE BURTON, AMY TERLAAK, ALISON DICKSON, CANDACE HOLIDAY, NICHOLE ROBERTS, DONNA SINGER, FRED RIGGS,
Plaintiffs,

v.

SAN JUAN COUNTY, SAN JUAN HEALTH SERVICE DISTRICT, COMMISSIONER TYRON LEWIS, COMMISSIONER BILL REDD, CRAIG HALLS, COMMISSIONER MARK MARYBOY,[1] REID WOOD, CLEAL BRADFORD, ROGER ATCITTY, JOHN LEWIS, JOHN HOUSEKEEPER, KAREN ADAMS, PATSY SHUMWAY, DR. JAMES REDD, DR. JONES, DR. NELSON, RICHARD BAILEY, SAN JUAN FOUNDATION, MARILEE BAILEY, ORA LEE BLACK, GARY HOLLADAY, LAURIE WALKER, FARMER'S/TRUCK INSURANCE, ST. PAUL'S INSURANCE, CARLA GRIMSHAW, GLORIA YANITO, JULIE BRONSON, their assigns, principals, corporations or associations, known and unknown, incorporated or unincorporated, and (other John and Jane Does as yet to be identified each in their individual and official capacities,
Defendants.

MARYBOY RESPONSE TO VERBAL OBJECTION TO HIS SELECTION OF COUNSEL REQUEST FOR EVIDENTIARY HEARING AND ORAL ARGUMENT

Judge Dale Kimball

Commissioner Mark Maryboy, by his special temporary counsel, Douglas R. Short, Esq., hereby responds to the objection to Mr. Maryboy's choice of legal counsel, which objection was made by Mr. Trentadue at the hearing held on February 13, 2001.

REQUEST FOR EVIDENTIARY HEARING AND ORAL ARGUMENT

Commissioner Maryboy respectfully requests an evidentiary hearing and oral argument in order to have an opportunity to fully address the issue unless the Court determines based upon the written submissions that Mr. Maryboy is entitled to select his own counsel without interference from the codefendants.

BACKGROUND

The dispute in this matter arises from the fact that Commissioner Maryboy, regardless of who serves as his counsel, does not wish to present a united defense with many of his codefendants. Indeed, as an elected County Commissioner he has the duty to investigate many of the allegations.

As a Navajo, Commissioner Maryboy over the past fifteen years has personally experienced and witnessed acts he believes evidence a pattern and history of discrimination against Navajos by many of his codefendants. He has also seen what he believes to be

unlawful conduct on the part of some of his codefendants.

As an elected County Commissioner, in his official capacity, he wants the alleged discrimination and unlawful activity to stop, in accordance with his official duties at issue in this case. He wants to independently control his own defense in harmony with those duties. The codefendants, however, are seeking to control his defense by interfering with his choice of counsel.

MARYBOY'S RIGHT TO CONTROL HIS OWN CASE

The Utah Supreme Court has unequivocally declared who controls an official's defense, even when sued in his official capacity. In *Fowler v Gillman*, 290 P. 358 (Utah 1030), the Court imposed costs against an official personally when the official was compelled to perform his duty, event though he was sued in his official capacity. The Court stated

> We, however, lay down this rule: Where in a proceeding of this nature against a public officer, he arbitrarily or capriciously and in bad faith, as here found, neglected or refused to perform a duty by law enjoined upon him and resulting from his office, and the party beneficially interested is put to costs in bringing a proceeding to compel the performance of the duty and prevails therein, the public officer is himself liable for costs. The point made that the judgment far costs should not go against the appellants personally because they were sued in their official capacity and

not as individuals is not tenable. In 38 C.J. 954, the author states:

> "The general rule is that public officers are personally liable for costs incurred in mandamus proceedings to compel them to perform their duties which they are required by law to perform."
>
> ... In a proceeding against a public officer to compel him to perform a required and demanded duty which he refused to perform, it is he and no one else who controls the defense in such particular. Hence, if the applicant prevails, the costs naturally ought to go against him who wrongfully refused to perform the required and demanded duty. Costs in such case may not be awarded against the county or other municipal body, or ordered paid out of county funds ... for in such case the county or other municipal body is not liable for such acts or omissions of the public officer or officers ....

As is readily evident from the forgoing ruling, Mr. Maryboy has the right and a substantial personal interest in controlling his own defense given the fact that the reason he is named in this matter in his official capacity is to compel him to perform his duties. He should not be required to walk lockstep with codefendants whom he fears may be refusing to perform their duties arbitrarily and in bad faith. To do so could make him personally liable for any costs. He ought to be free to select counsel he believes is best able to protect his interests by helping him to perform his duties.

RETALIATION

In order to be faithful to his official duties, Commissioner Maryboy wanted to submit to the Court his affidavit regarding some of his experiences and observations so that the Court may be able to stop the alleged discrimination and unlawful conduct. Ever since he spoke out through the affidavit, however, his codefendants have been using every means available to prevent him from breaking ranks, now including this objection.

In order to keep him quiet, his codefendants are currently seeking a gag order on Mr. Maryboy from this Court. Amazingly, his own counsel of record joined in the motion for a protective order to gag him.

This is a classic and transparent case of the majority trying to silence and control the minority because the minority is questioning the conduct of the majority. Commissioner Maryboy has long been a vocal critic of many of his codefendants so they have been using his own attorney of record to fight him

Mr. Maryboy has been trying for over four months to get new counsel, but has, been thwarted by his codefendants. Codefendant Truck/Farmers Insurance Company has steadfastly refused him the ability to select his own counsel without their interference, and has even threatened him in several letters that it will withdraw his defense if he does not cooperate with the defense of the other codefendants. [2] His own counsel of record, Jesse Trentadue, refused for over two mouths to withdraw inspite of his blatant conflicts arising from the dual representation, even though Mr. Maryboy gave him clear and unequivocal notice in three letters that he did not consent to the dual representation. [3] The representation at the February 13th hearing by Mr.

Trentadue that he was only told about the conflict a week before and was fired that morning at 2:00 am is patently false as the letters reveal In direct violation of Rule 1.9, Suitter Axland continues to act in a manner materially adverse to Mr. Maryboy's interests in this case by opposing his choice of counsel and advising the County to not provide him a defense.

His fellow codefendants, the County Commissioners and the County Attorney, have refused to provide him any defense, by any counsel, even though the State Governmental Immunity Act expressly requires the County to provide him a defense unless he acted with malice or fraud. Utah Code Ann. 63-30-36. [4] This denial of his statutory property right is clearly arbitrary and capricious and obviously designed to keep Commissioner Maryboy from defending himself in the case in the manner he wishes.

San Juan County Attorney Craig Halls, has personally advised and warned Commissioner Maryboy that he has a fiduciary duty to the County to agree with the other Commissioners and to not say or do anything to hurt their case (and obviously Mr. Halls' own cases and personal interests). Mr. Halls has also advised Commissioner Maryboy that since he has not cooperated with their defense, the County would deny him a defense.

It is Commissioner Maryboy who is acting in his official capacity in the best interests of the County, the Health District and the taxpayers. His codefendants, who are being sued in their individual capacities for actual and punitive damages, are acting in their own best interests.

No one believes that Mr. Maryboy's codefendants are looking out for his best interests by making this

objection. In deed, any assertion that Commissioner Maryboy needs somebody to look out for him is racially paternalistic. Mr. Maryboy is perfectly able to make his own decisions, and as an elected County officer, has every right and power to chose how to defend himself in his official capacity.

The ultimate issue here is whether Commissioner Maryboy's codefendants, individuals who have obvious and severe conflicts of interest with Commissioner Maryboy's interests, are going to be allowed to interfere with his selection of counsel to represent him.

STANDING

The question of whether Commissioner Maryboy's codefendants even have standing to object to Commissioner Maryboy's selection of counsel is dispositive of this objection. Codefendants simply do [illegible] standing to object.

The concept of a conflict of interest is that there are conflicts of interest between the current or former clients of the attorney so as to impair the attorney's ability to provide undivided loyalty to his clients, not to some third party who actually has interests adverse to his clients.

The codefendants are not clients of Mr. Short and therefore simply do not have any standing to claim Mr. Short has a conflict of interest. They cannot claim that Mr. Short's loyalty to them is somehow being impaired. So why are they claiming a conflict?

The Comments to Rule 1,7 of the Utah Rules of Professional Conduct warn that the cry of conflict by opposing parties should be entertained only in rare

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circumstances and with "caution," because it could be a form of "harassment."

Conflict Charged by an Opposing Party

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. .., Where the conflict is such as to call into question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

The responsibility for resolving any question of conflict clearly belongs with Mr. Short. He has fulfilled that responsibility in accordance with the rules. Commissioner Maryboy sought out Mr. Short to represent him. Mr. Short is uniquely familiar with the conflict issues surrounding the representation of government officials, in both their official and personal capacities, as well as the rights and duties of government officials when involved in litigation. He has carefully reviewed the rules, considered the potential conflicts, consulted Bar Counsel, consulted fully with both Commissioner Maryboy and the former clients, and obtained the consent of the former clients after they consulted independently with their own counsel in accordance with rule 1.9. There is no question Mr. Short has conscientiously approached the question with due diligence. There is no reason for the court to infer that Mr. Short has neglected his responsibility to resolve any potential conflict.

Mr. Short is fully convinced any question of a conflict is resolved in favor of Mr. Short being able to represent Commissioner Maryboy, as requested by Mr. Maryboy. If he were not convinced, he would not risk the possibility of a bar complaint to defend Mr. Maryboy's interests. In deed, the fact that Mr. Short is willing to face such a risk at the request of Commissioner Maryboy evidences his loyalty to Commissioner Maryboy, a loyalty that has clearly been lacking thus far from his former counsel of record.

The only reason we are even addressing a conflict question is because the codefendants, who are in effect opposing parties, are raising it. This is not, however, the type of objection anticipated or allowed in the Comment. There is no "clear" question regarding the "fair or efficient administration of justice" so as to allow opposing counsel to raise a challenge.

If Mr. Maryboy has made an informed decision that he desires to be represented by Mr. Short, allowing him to select his own counsel is justice. Allowing his political and legal opponents to stop him from having his counsel of choice would be the clear injustice.

The only real question prompting Mr. Trentadue's objection is whether the other codefendants are going to face are opposing counsel with significant knowledge of the case who is willing to defend Commissioner Maryboy in the manner he wishes to be defended, i.e., an opposing counsel who will help Commissioner Maryboy break ranks with them, thereby possibly placing their own defenses at risk, in order to protect himself, the County, the Health District and the taxpayers.

This strategic disagreement as to how Mr. Maryboy should defend his own case does not give the codefendants standing to challenge his choice of counsel. While the possibility of Mr. Short representing Commissioner Maryboy is not desirable to the codefendants, because of its possible adverse impact on them personally, it is hardly going to impair the fair and efficient administration of justice if Mr. Maryboy has counsel willing to follow his wishes.

There are only two rules of professional conduct that address the possibility of a conflict. It is clear under the express terms of both that the codefendants have no rights at issue which could give them standing.

CONFLICT OF INTEREST UNDER RULE 1.7

The codefendants have not identified how Mr. Short's representation of Mr. Maryboy will constitute conflict, but they are likely going to rely on Rule 1.7. The fact of the matter is, however, that Rule 1.7 does not even come into play because Rule 1.7 applies only to conflicts between current clients.

Since Mr. Short is no longer representing (or better stated, advising) plaintiffs Singer, Riggs and Dickson in the Navajo Court case, and has no other current attorney- client relationship in this case, Rule 1.7 simply does not apply.

Since the codefendants do not have any attomey-client relationship with Mr. Short, they simply do not have standing under Rule 1.7 to challenge Commissioner Maryboy's selection of his own counsel. Mr. Short, if he is allowed by the Court to represent Mr. Maryboy, will represent only Mr. Maryboy. He will not have any attorney client relationship with any of the other

codefendants or plaintiffs so as to trigger Rule 1.7.[5] Consequently, Rule 1.7 simply does not come into play.

CONFLICT OF INTEREST WITH FORMER CLIENTS UNDER RULE 1.9

The codefendants may also seek to argue that Mr. Short has a conflict under Rule 1.9 because three of the plaintiffs may be considered his former clients. The codefendants, however, clearly have no intent to be protected under Rule 1.9 because they are not former clients.

It is a safe bet the defendants have not objected in order to protect the interests of the former clients, which is the purpose of Rule 1.9. But, in order to provide the Court with the full picture, Mr. Maryboy will nevertheless address the provisions of Rule 1.9.

Under Rule 1.9, a former client may freely waive any potential or actual conflict and consent to former counsel representing an adverse party, even in the same case. The Rule expressly provides;

A lawyer who has formerly represented a client in a matter shall not thereafter: (a) represent another person in the same or a substantially factually related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; ...

Mr. Short has consulted with the former clients, and they have willingly consented to his new representation of Commissioner Maryboy. Whether one considers this to be then same matter, or simply a factually related matter, the Rule makes it clear that the former clients have this right to waive any conflict.[6]

CONCLUSION

The self-serving objection of the codefendants, whether based on Rule 1.7 or Rule 1.9, is not based on any recognizable rights or interests of defendants. It is just one more example of how the codefendants have been harassing Commissioner Maryboy since he revealed that he is not willing to present a united defense on all issues. Such retaliation should not be sanctioned. Mr. Maryboy therefore respectfully requests that the Court enter an order expressly authorizing Mr. Maryboy to select his own counsel to defend him in this case without any further interference or impediment by the codefendants.

ATTORNEY FEES

As previously noted, Commissioner Maryboy is entitled to a defense provided at the expense of the County under the Utah Governmental Immunity Act. Thus far the County has refused to provide him a defense, and yet it has caused him to incur legal fees to oppose their objection. If Mr. Maryboy prevails on this objection, he respectfully requests in accordance with the Governmental Immunity Act that the County be ordered to promptly pay his attorney fees in defending against this objection within two weeks of submitting a bill.

Respectfully Submitted this 23rd Day of February, 2001

Douglas R. Short, Esq.
Special Counsel for
Commissioner Mark Maryboy

FOOTNOTES -

[1] Official capacity only.

[2] SEE EXHIBIT A (November 6th letter from Rose Reilley to Jennifer King (counsel to Truck Insurance) requesting that Maryboy be allowed to control his own defense and retain his own counsel); EXHIBIT B (November 7th letter from Barbara Barrett (counsel for Utah Association of Counties Insurance Mutual) directly to Maryboy warning him that his affidavit was a breach of his duty to cooperate and would void his coverage if he did not immediately cooperate and cease taking actions which would "jeopardize" the legal position of the County and the Individual County Commissioners); EXHIBIT C (November 13th letter from King to Reilley refusing to allow Mayboy to hire own counsel); EXHIBIT D (December 7th letter from Short to King explaining conflicts after verbal refusal by King to allow Maryboy to select his own counsel); EXHIBIT E (December 19th letter from King to Short acknowledging conflict and agreeing to hire Short and warning that Maryboy must cooperate or risk losing defense); EXHIBIT F (December 20th letter from King to Short refusing to allow Maryboy to select Short); EXHIBIT G (January 26th letter from King directly to Maryboy warning him to cooperate or risk losing his defense).

[3] SEE EXHIBIT D (December 7th letter from Short to King laying out conflicts of Suitter Axland, which letter was copied to Mr. Trentadue and hand delivered by short to Kathleen Liuzzi); EXHIBIT H (February 7th letter from Short to Trentadue rehearsing Suitter Axland's conflicts in greater detail); EXHIBIT I (February 8th letter from Trentadue to Short refusing to recognize conflict, but agreeing to withdraw based on

Maryboy's formal request and trying to shift his burden of preparing application to withdraw onto Maryboy); EXHIBIT J (February 12/13th letter from Short to Trentadue clarifying Trentadue had not been asked to withdraw by Maryboy, but rather Maryboy was simply making him aware of his unilateral duty to withdraw given all of the conflicts and misconduct committed by Suitter Axland towards its client of record Mr. Maryboy)

[4] Since there is no allegation by the plaintiffs that Commissioner Maryboy ever acted with fraud or malice, Mr. Maryboy is unquestionably entitled to a defense under the Governmental Immunity Act, regardless of who his counsel is.

[5] The codefendants may erroneously assert that since they believe Mr. Maryboy owes some fiduciary duty to his codefendants, Mr. Short would also owe them some duty of loyalty that may be impaired by his previous involvement in the Navajo Court case. This simply is not true. There Is no attorney-client relationship created between an attorney and a codefendant of his client when his client does not wish to provide a united defense and may in fact have causes of action against his codefendants. Mr. Maryboy should be able to have counsel he trusts to advise him of his fiduciary duties.

[6] The former clients have been advised that if Mr. Short undertakes Mr. Maryboy's representation that he may be required to oppose their interests, motions and objectives, it so directed by Mr. Maryboy. Given their faith and confidence in Mr. Maryboy as their elected representative and his willingness to try stop any alleged discrimination or unlawful activity, the plaintiffs are willing to take this risk. That is their choice, not the choice of the other defendants.

SUPPLEMENTAL

BRIEF

(10)

No. 02-1774; 02-1253

In the

Supreme Court of the United States

IN RE: FRED RIGGS, DONNA SINGER and AL DICKSON

FRED RIGGS, DONNA SINGER and AL DICKSON,

Petitioners,

v.

SAN JUAN COUNTY, SAN JUAN HEALTH SERVICES DISTRICT, County Commissioner J. TYRON LEWIS, County Commissioner LYN STEVENS (official capacity only), County Commissioner MANUAL MORGAN (official capacity only), RICK BAILEY, County Attorney CRAIG HALLS, BILL REDD, REID WOOD, KAREN ADAMS, ROGER ATCITTY, PATSY SHUMWAY (official capacity only), JOHN LEWIS, LAUREN SCHAFER, TRUCK INSURANCE EXCHANGE AND DENNIS ICKES; and new district officers, NETTIE PRACK (official capacity only), GLEN IMEL (official capacity only), CLEAL BRADFORD (official capacity only), JOHN FELMETH (official capacity only) and as yet unnamed JOHN AND JANE DOES, in their official and individual capacities, jointly and severally,

Respondents.

Petition for a Writ of Certiorari (on Rehearing) and Petition for a Writ of Mandamus and Prohibition to the United States Court of Appeals for the Tenth Circuit

PETITIONERS' SUPPLEMENTAL AUTHORITY BRIEF

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SUPPLEMENTAL AUTHORITIES IN SUPPORT OF THE PETITIONERS PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION AND PETITION FOR REHEARING OF PETITION FOR CERTIORARI

Now come the Petitioners pursuant to Supreme Court rule 15 to inform the Court of (1) new legislation S. 578 that should impact this case's petition for rehearing for the petition for certiorari (02-1253) and petition for a writ of mandamus (02-1774) involving the inherent sovereign authority of Indian Nation Courts equally over all 'persons'; and (2) new case law.

NEW LEGISLATION WILL EFFECT THIS CASE

On March 3, 2003 Senator Inouye submitted to the Senate S. 578 **Tribal Government Amendments to the Homeland Security Act of 2002.** [1] The bill's announcement read as follows:

> "INTRODUCTION OF BILLS AND JOINT RESOLUTIONS – (Senate - March 07, 2003)[Page: S3369]
>
> > "S. 578. A bill to amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security, and for other purposes; to the Committee on Governmental Affairs."

Section 13 is the pertinent part that deals with Indian Nation inherent sovereign authority over non-Indians being reserved except by *Congress*' express

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[1] Despite a thorough investigation looking for what some popularly call the "Hicks' fix", even as to calling several Senator's offices *including* Senator Inouye's office, Plaintiffs' counsel did not find any indication that Senator Inouye had submitted a bill supporting Indian inherent sovereignty. Nor did the initial announcement of the S. 578 above describe precisely how the bill applied to Indian Nation governments' inherent sovereignty.

restrictions.[2] The bill is to be heard July 30, 2003 before the Senate committee on Indian Affairs. This bill clearly supports the Petitioners position of the lack of Congressional and Executive express divestiture of Indian Nation inherent sovereignty over non-Indians as would be normally found in Treaties, executive orders, statutes, BIA-judicial program contracts, express executive branch action, all within the examination under **Nat'l Farmers Union Ins. Co. v. Crow** , 471 U.S. 845, 855-856 (1985) that the federal Court below has refused.

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[2] "SEC. 13. CONGRESSIONAL AFFIRMATION AND DECLARATION OF TRIBAL GOVERNMENT AUTHORITIES.(a) IN GENERAL- For the purpose of this Act, Congress affirms and declares that the inherent sovereign authority of an Indian tribal government includes the authority to enforce and adjudicate violations of applicable criminal, civil, and regulatory laws committed by any person on land under the jurisdiction of the Indian tribal government, except as expressly and clearly limited by–(1) a treaty between the United States and an Indian tribe; or

(2) an Act of Congress.

(b) SCOPE- The authority of an Indian tribal government described in subsection (a) shall–

(1) be concurrent with the authority of the United States; and

(2) extend to–

(A) all places and persons within the Indian country (as defined in section 1151 of title 18, United States Code) under the concurrent jurisdiction of the United States and the Indian tribal government; and

(B) any person, activity, or event having sufficient contacts with that land, or with a member of the Indian tribal government, to ensure protection of due process rights."

NEW CASE LAW

On June 30, 2003, the Third Circuit Court's *Camiolo v. State Farm Casualty et al*, 2003 U.S. App. LEXIS 13258, a precedential decision, discusses and defines the reasoning behind 28 U.S.C. §1738 in giving full faith and credit to States, territories and possessions. *Camilio* observed that Supreme Court holds that ; (A) "elementary principles of federalism and comity" are "embodied in the full faith and credit statute, 28 U.S.C. § 1738." [citations omitted] Id. [*22]; (B) a venerable principle of Constitutional jurisprudence is that a "statute is a 'public act,' faith and credit must be given to its provisions[.]"[citations omitted]; (C) so as "not [to] unduly interfere with the legitimate activities of the States [territories, possessions]," [citation omitted] and to enforce the protections intended to States [territories,possessions] by the Full Faith and Credit Clause of the Constitution [citations omitted]"; id.; (D) Congress mandates that: "The Acts of the legislature of any State, Territory, or Possession of the United States . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.28 U.S.C. § 1738." ; (E) that, "to the extent that the Acts of State [territory,possession] legislatures do not conflict with the federal Constitution, statutes, and regulations and, thus, run afoul of the Supremacy Clause, U.S. Const., Art. VI, cl. 2, the federal courts are obliged to afford the "Acts of state [territories, possessions] legislatures" the same respect that the States' [territories, possessions'] own courts would grant those statutes. ... [citations omitted]." Id. [23]. Emphasis added.

Camilio also found that "Federal law is, of course, supreme; "[t]o [ ] federal statute and policy, conflicting state law and policy must yield. Constitution, Art. VI, cl.

2." *Liner v. Jafco, Inc.*, 375 U.S. 301, 309, 11 L. Ed. 2d 347, 84 S. Ct. 391 (1964)." [*36].

Undisputedly the Navajo Treaties of 1849 and 1868, the Navajo Court statutes, Navajo Bill of Rights, Navajo Preference in Employment act, as found violated by the defendants were Navajo duly enacted and extensions of legitimate Navajo sovereignty fully protected by Congressional acts. As the Article VI Supreme law, these Navajo laws are protected by Treaty, and Congressional mandates found in 28 USC §§450 (self-determination act); 450(e) (Indian preference in employment act); 1301-1328 (Indian civil rights act); 3601-3663 Indian Tribal Justice Support Act.

The *Rooker-Feldman* doctrine, which precludes lower federal court jurisdiction over matters litigated in state court or "inextricably intertwined" with a state adjudication should more importantly apply here when a Treaty, the Article VI supreme law of the land, is involved, and authority unlike states, does not derive from Congress. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983); *see also Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411 (3d Cir. 2003).

CONCLUSION

Based upon this new legislation and new case law, the petition for rehearing for the Petition for Certiorari 02-1253 and the Petition for a Writ of Mandamus and Prohibition 02-1774 should be accepted, and the Navajo Court orders for violations of Navajo law, never denied by the respondents (2 of whom are Navajo), who volunteered for Navajo Court jurisdiction by filing non-compulsory counterclaims, for violations occurring within the Navajo jurisdiction under 18 U.S.C. 1151, should be granted.

Respectfully Submitted,

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